

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]

# SENATE BILL NO. 500

97TH GENERAL ASSEMBLY

2014

4194S.02T

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## AN ACT

To repeal section 456.950, RSMo, and enact in lieu thereof four new sections relating to trust instruments.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 456.950, RSMo, is repealed and four new sections  
2 enacted in lieu thereof, to be know as sections 456.950, 456.2-205, 456.4-420, and  
3 474.395, to read as follows:

456.950. 1. As used in this section, "qualified spousal trust" means a  
2 trust:

3 (1) The settlors of which are husband and wife at the time of the creation  
4 of the trust; and

5 (2) The terms of which provide that during the joint lives of the settlors  
6 all property or interests in property transferred to, or held by, the trustee are:

7 (a) Held and administered in one trust for the benefit of both settlors,  
8 revocable by either or both settlors acting together while either or both are alive,  
9 and each settlor having the right to receive distributions of income or principal,  
10 whether mandatory or within the discretion of the trustee, from the entire trust  
11 for the joint lives of the settlors and for the survivor's life; or

12 (b) Held and administered in two separate shares of one trust for the  
13 benefit of each of the settlors, with the trust revocable by each settlor with  
14 respect to that settlor's separate share of that trust without the participation or  
15 consent of the other settlor, and each settlor having the right to receive  
16 distributions of income or principal, whether mandatory or within the discretion  
17 of the trustee, from that settlor's separate share for that settlor's life; or

18 (c) Held and administered under the terms and conditions contained in

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 paragraphs (a) and (b) of this subdivision.

20           2. A qualified spousal trust may contain any other trust terms that are  
21 not inconsistent with the provisions of this section.

22           3. **Any** property or interests in property [held as tenants by the entirety  
23 by a husband and wife] that is at any time transferred to the trustee of a  
24 qualified spousal trust of which the husband and wife are the settlors, shall  
25 **thereafter** be [held and] administered as provided by the trust terms in  
26 accordance with paragraph (a), (b), or (c) of subdivision (2) of subsection 1 of this  
27 section[, and all such]. **All trust** property and interests in property **that is**  
28 **deemed for purposes of this section to be held as tenants by the**  
29 **entirety**, including the proceeds thereof, the income thereon, and any property  
30 into which such property, proceeds, or income may be converted, shall [thereafter]  
31 have the same immunity from the claims of the separate creditors of the settlors  
32 as would have existed if the settlors had continued to hold that property as  
33 husband and wife as tenants by the entirety. **Property or interest in**  
34 **property held by a husband and wife as tenants by the entirety or as**  
35 **joint tenants or other form of joint ownership with right of**  
36 **survivorship shall be conclusively deemed for purposes of this section**  
37 **to be held as tenants by the entirety upon its transfer to the qualified**  
38 **spousal trust. All such transfers shall retain said immunity**, so long as:

39           (1) Both settlors are alive and remain married; and

40           (2) The property, proceeds, or income continue to be held in trust by the  
41 trustee of the qualified spousal trust.

42           4. Property or interests in property held by a husband and wife or held  
43 in the sole name of a husband or wife that is not held as tenants by the entirety  
44 **or deemed held as tenants by the entirety for purposes of this section**  
45 and is transferred to a qualified spousal trust shall be held as directed in the  
46 qualified spousal trust's governing instrument or in the instrument of transfer  
47 and the rights of any claimant to any interest in that property shall not be  
48 affected by this section.

49           5. Upon the death of each settlor, all property and interests in property  
50 held by the trustee of the qualified spousal trust shall be distributed as directed  
51 by the then current terms of the governing instrument of such trust. Upon the  
52 death of the first settlor to die, if immediately prior to death the predeceased  
53 settlor's interest in the qualified spousal trust was then held in such settlor's  
54 separate share, the property or interests in property in such settlor's separate

55 share may pass into an irrevocable trust for the benefit of the surviving settlor  
56 upon such terms as the governing instrument shall direct, including without  
57 limitation a spendthrift provision as provided in section 456.5-502.

58         6. No transfer by a husband and wife as settlors to a qualified spousal  
59 trust shall affect or change either settlor's marital property rights to the  
60 transferred property or interest therein immediately prior to such transfer in the  
61 event of dissolution of marriage of the spouses, unless both spouses otherwise  
62 expressly agree in writing.

63         7. This section shall apply to all trusts which fulfill the criteria set forth  
64 in this section for a qualified spousal trust regardless of whether such trust was  
65 created before or after August 28, 2011.

**456.2-205. 1. Subject to the exception in subsection 2 of this  
2 section, a provision in a trust instrument requiring the mediation or  
3 arbitration of disputes between or among the beneficiaries, a fiduciary,  
4 a person granted nonfiduciary powers under the trust instrument, or  
5 any combination of such persons is enforceable.**

**6         2. A provision in a trust instrument requiring the mediation or  
7 arbitration of disputes relating to the validity of a trust is not  
8 enforceable unless all interested persons with regard to the dispute  
9 consent to the mediation or arbitration of the dispute.**

**456.4-420. 1. If a trust instrument containing a no-contest clause  
2 is or has become irrevocable, an interested person may file a petition  
3 to the court for an interlocutory determination whether a particular  
4 motion, petition, or other claim for relief by the interested person  
5 would trigger application of the no-contest clause or would otherwise  
6 trigger a forfeiture that is enforceable under applicable law and public  
7 policy.**

**8         2. The petition described in subsection 1 of this section shall be  
9 verified under oath. The petition may be filed by an interested person  
10 either as a separate judicial proceeding, or brought with other claims  
11 for relief in a single judicial proceeding, all in the manner prescribed  
12 generally for such proceedings under this chapter. If a petition is  
13 joined with other claims for relief, the court shall enter its order or  
14 judgment on the petition before proceeding any further with any other  
15 claim for relief joined therein. In ruling on such a petition, the court  
16 shall consider the text of the clause, the context to the terms of the  
17 trust instrument as a whole, and in the context of the verified factual**

18 allegations in the petition. No evidence beyond the pleadings and the  
19 trust instrument shall be taken except as required to resolve an  
20 ambiguity in the no-contest clause.

21       3. An order or judgment determining a petition described in  
22 subsection 1 of this section shall have the effect set forth in subsections  
23 4 and 5 of this section, and shall be subject to appeal as with other final  
24 judgments. If the order disposes of fewer than all claims for relief in  
25 a judicial proceeding, that order is subject to interlocutory appeal in  
26 accordance with the applicable rules for taking such an appeal. If an  
27 interlocutory appeal is taken, the court may stay the pending judicial  
28 proceeding until final disposition of said appeal on such terms and  
29 conditions as the court deems reasonable and proper under the  
30 circumstances. A final ruling on the applicability of a no-contest clause  
31 shall not preclude any later filing and adjudication of other claims  
32 related to the trust.

33       4. An order or judgment, in whole or in part, on a petition  
34 described in subsection 1 of this section shall result in the no-contest  
35 clause being enforceable to the extent of the court's ruling, and shall  
36 govern application of the no-contest clause to the extent that the  
37 interested person then proceeds forward with the claims described  
38 therein. In the event such an interlocutory order or judgment is  
39 vacated, reversed, or otherwise modified on appeal, no interested  
40 person shall be prejudiced by any reliance, through action, inaction or  
41 otherwise, on the order or judgment prior to final disposition of the  
42 appeal.

43       5. An order or judgment shall have effect only as to the specific  
44 trust terms and factual basis recited in the petition. If claims are later  
45 filed that are materially different than those upon which the order or  
46 judgment is based, then to the extent such new claims are raised, the  
47 party in whose favor the order or judgment was entered shall have no  
48 protection from enforcement of the no-contest clause otherwise  
49 afforded by the order and judgment entered under this section.

50       6. For purposes of this section, a "no-contest clause" shall mean  
51 a provision in a trust instrument purporting to rescind a donative  
52 transfer to, or a fiduciary appointment of, any person, or that otherwise  
53 effects a forfeiture of some or all of an interested person's beneficial  
54 interest in a trust estate as a result of some action taken by the

55 beneficiary. This definition shall not be construed in any way as  
56 determining whether a no-contest clause is enforceable under  
57 applicable law and public policy in a particular factual situation. As  
58 used in this section, the term "no-contest clause" shall also mean an "in  
59 terrorem clause".

60 7. A no-contest clause is not enforceable against an interested  
61 person in, but not limited to, the following circumstances:

62 (1) Filing a motion, petition, or other claim for relief objecting  
63 to the jurisdiction or venue of the court over a proceeding concerning  
64 a trust, or over any person joined, or attempted to be joined, in such a  
65 proceeding;

66 (2) Filing a motion, petition, or other claim for relief concerning  
67 an accounting, report, or notice that has or should have been made by  
68 a trustee, provided the interested person otherwise has standing to do  
69 so under applicable law, including, but not limited to, section 456.6-603;

70 (3) Filing a motion, petition, or other claim for relief under  
71 chapter 475 concerning the appointment of a guardian or conservator  
72 for the settlor;

73 (4) Filing a motion, petition, or other claim for relief under  
74 chapter 404 concerning the settlor;

75 (5) Disclosure to any person of information concerning a trust  
76 instrument or that is relevant to a proceeding before the court  
77 concerning the trust instrument or property of the trust estate, unless  
78 such disclosure is otherwise prohibited by law;

79 (6) Filing a motion, pleading, or other claim for relief seeking  
80 approval of a nonjudicial settlement agreement concerning a trust  
81 instrument, as set forth in section 456.1-111;

82 (7) To the extent a petition under subsection 1 of this section is  
83 limited to the procedure and purpose described therein.

84 8. In any proceeding brought under this section, the court may  
85 award costs, expenses, and attorneys' fees to any party, as provided in  
86 section 456.10-1004.

474.395. 1. If a will contains a no-contest clause, an interested  
2 person may file a petition with the court for a determination whether  
3 a particular motion, petition, action, or other claim for relief by the  
4 interested person would trigger application of the no-contest clause or  
5 would otherwise trigger a forfeiture that is enforceable under

6 applicable law and public policy, which application would be  
7 adjudicated in the manner prescribed in section 456.4-420, and subject  
8 to the provisions set forth therein.

9       2. For purposes of this section, a "no-contest clause" shall mean  
10 a provision in a will purporting to rescind a donative transfer to, or a  
11 fiduciary appointment of, any person who institutes a proceeding  
12 challenging the validity of all or part of the will, or that otherwise  
13 effects a forfeiture of some or all of an interested person's beneficial  
14 interest in the estate as a result of some action taken by the  
15 beneficiary. This definition shall not be construed in any way as  
16 determining whether a no-contest clause is enforceable under  
17 applicable law and public policy in a particular factual situation. As  
18 used in this section, the term no-contest clause shall also mean an "in  
19 terrorem clause".

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Bill

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